

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS:

Felipe Oteze Fowlkes,

vs.

PLAINTIFF,

FILED
IN CLERKS OFFICE

2007 JUN 29 12:49
CIVIL ACTION

#05 CV-11749-JLT
U.S. DISTRICT COURT
DISTRICT OF MASS.

Kathleen M. Dennehy, et., AL.,

defendants.

PLAINTIFF'S OPPOSITION to Defendants' Motion
to Dismiss Pursuant to Fed.R.Civ.P. 41(B)

Now comes the Plaintiff in the above
entitled action in opposition to defendants'
motion to Dismiss Pursuant to Fed.R.Civ.P.
41(B) and shows that:

1. The defendants are not entitled
to a dismissal of the action under Fed.R.
Civ.P. 41(B). Instead, according to the
Court's May 17, 2007, order, the defendants
are required to respond to the complaint
within 20 days of receipt of the "Definite
Statements."

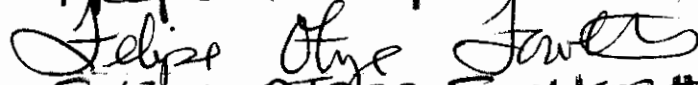
2. The definite statements as to
each defendant complies with the Court's
order. Due to the nature of the allegations
and the involvement and conduct alleged
against 22 defendants, the definite state-
ments cannot be simplified or clarified
any better than that.

3. The defendants motion to Dismiss on these grounds are frivolous and displaced in that: the defendants sole claim that "plaintiff was at another institution when the acts he alleges against defendant David Nolan occurred" is an argument reserved for defendants' responsive pleadings to the Complaint and cannot be made the basis for a dismissal motion under Rule 41(B). Moreover, defendants claim that plaintiff was at another institution at the time when acts he alleges against defendant Nolan occurred, contradicts their own claim that plaintiff's definite statement pleadings does not contain "the dates upon which the alleged acts occurred" and "the specific institution at which the acts occurred." If plaintiff's pleadings did not contain such "times" and "place" the defendants would not be able to make such a frivolous claim.

4. Pro se complaints are held to less stringent standards than formal pleadings drafted by attorneys and unless it appears beyond doubt that pro se plaintiff can prove not set of facts in support of his claims which would entitle him to relief, the complaint should not be dismissed.

And pro se plaintiff is entitled to an opportunity to offer proof. HAINES v. KERNER 92 S.Ct. 594, 596 (1972)

Dated: June 26, 2007.

Respectfully Submitted,

Felipe Oteze Fawkes #W84202
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P.O. Box 8000
SHIRLEY, MA 01464

CERTIFICATE OF SERVICE

I, Felipe Oteze Fawkes, Plaintiff, Pro Se, certify that I have caused a true written copy of the foregoing opposition to be served by pre-paid first class mail on defendants' Attorney, DARYL F. GLAZER, D.O.C. Legal Division, 70 Franklin St., Suite 600, Boston, MA 02110.

Dated: June 26, 2007.


Felipe Oteze Fawkes